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HOME DEPOT U.S.A., INC.

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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

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B&O MANUFACTURING, INC.,

CASE NO. C07 02864 JSW

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Plaintiff,

**STIPULATION AND ORDER OF  
DISMISSAL OF ACTION WITH  
PREJUDICE**

18

v.

[FRCP 41(A)(1)]

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THE HOME DEPOT U.S.A., INC.,

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Defendant.

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**AND RELATED COUNTERCLAIM**

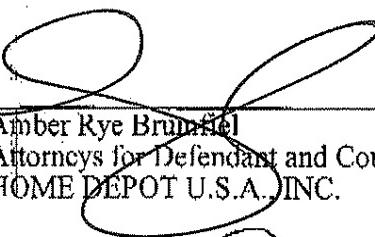
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IT IS HEREBY STIPULATED, by and between the parties-in-interest to this Action and Counterclaims, by and through their respective counsel, that the Action herein, consisting only of the Complaint filed by plaintiff and counter-defendant B&O Manufacturing, Inc. ("B&O") against defendant and counter-claimant Home Depot U.S.A., Inc. ("Home Depot") and excluding the Counterclaims filed by Home Depot against B&O, be dismissed with prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, each party to bear its own attorneys' fees and costs. The Counterclaims remain pending and are stayed by operation of the

1 Bankruptcy Code pending further proceedings in U.S. Bankruptcy Court in relation to B&O's  
2 July 23, 2008 Chapter 7 filing.

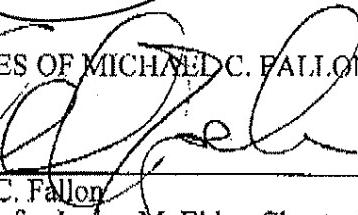
3 **IT IS SO AGREED AND STIPULATED.**

4 DATED: November 13 2008 SEDGWICK, DETERT, MORAN & ARNOLD LLP

5 By:   
6

7 Amber Rye Brunfield  
Attorneys for Defendant and Counter-claimant  
8 HOME DEPOT U.S.A., INC.  
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10 DATED: November 3, 2008 LAW OFFICES OF MICHAEL C. FALLON

11 By:   
12

13 Michael C. Fallon  
14 Attorneys for Janina M. Elder, Chapter 7 Trustee for  
15 B&O MANUFACTURING, INC., Plaintiff and Counter-  
16 defendant  
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18 Pursuant to stipulation of the parties, and Rule 41(a)(1) of the Federal Rules of  
19 Civil Procedure, IT IS HEREBY ORDERED that the Action herein, consisting only of the  
20 Complaint filed by B&O against Home Depot and excluding the Counterclaims filed by Home  
21 Depot against B&O be, and hereby is, DISMISSED WITH PREJUDICE, each party to bear its  
22 own attorneys' fees and costs. The Counterclaims remain pending and are stayed by operation of  
23 the Bankruptcy Code pending further proceedings in U.S. Bankruptcy Court in relation to B&O's  
24 July 23, 2008 Chapter 7 filing.

25 Dated: November 14, 2008

  
26 The Honorable Jeffrey S. White

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